



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
7600 Sand Point Way N.E.
Seattle, Washington 98115

March 16, 2015

Brigadier General John Kem
Northwest Division Commander
U.S. Army Corps of Engineers
1125 NW Couch Street, Suite 500
Portland, Oregon 97209

General Kem
Dear General Kem:

I have and continue to appreciate the good and productive efforts we have been making at tackling difficult challenges on a host of topics which have lingered, and I trust that our momentum will continue apace. I want to express my personal appreciation for the clear, constructive and energetic problem-solving attitude you have brought to bear on these and other topics, and I wish you well in your next endeavor, knowing that these qualities will no doubt serve you and the United States Army very well.

By this letter I am writing to follow up on an issue we did not discuss in our meeting last month in Portland, but which we explored with you nearly a year ago in Seattle. Recently, the Puget Sound Federal Caucus convened to prepare a 2015-16 work plan and set priorities for the coming year. As you know, shoreline protection remains a priority for the Caucus and for the aquatic resources and habitats that constitute a portion of our trust responsibilities to the Federally recognized Treaty Tribes of the Pacific Northwest. My staff reviewed our previous discussions with you and EPA Region 10 Regional Administrator Dennis McLerran regarding the method the Corps Seattle District uses to determine its jurisdiction for Clean Water Act permitting purposes. Because nearly a year has passed since we spoke with you, I want to summarize my understanding of where we left those discussions, and confirm that I've accurately captured the salient points.

In our 2014 meeting, I reviewed the National Marine Fisheries Service's (NMFS) understanding that the Corps Seattle District uses the Mean Higher High Water (MHHW) mark to establish Corps jurisdiction for Clean Water Act permitting purposes. Further, I explained NMFS' understanding that other Corps districts across the nation use different methodologies, and explained my belief that using the Highest Astronomical Tide (HAT) line instead is appropriate in Puget Sound. I shared our findings (enclosed) that because of the physical dynamics of the Sound and the extreme tidal ranges throughout the year, the HAT more accurately captures the extreme high tide level defined in the Clean Water Act than does MHHW for this region.

I recall at the time of our conversation, you affirmed that as Commander of the Northwest Division of the Corps, you retain the authority to determine what method the Districts in the Division should use, and that you did not intend to change the Seattle District's approach to establishing jurisdiction. I clarified that NMFS uses HAT to designate Critical Habitat



boundaries under the federal Endangered Species Act (ESA) and explained that for low-gradient beaches, the difference between MHHW and HAT is substantial, potentially 200 feet in some areas. NMFS finds that the marine shoreline area between MHHW and HAT (known as the supratidal area) provides habitat for ESA-listed salmon for migration, feeding, and refuge. It also supports the food webs of salmon and other species.

By this letter I would like to verify that I am characterizing our discussions accurately, and to inquire whether additional technical information from NMFS regarding the importance of the supratidal area would be useful to your team. I would be happy to arrange a briefing for your staff about the ecosystem functions in this part of the marine shoreline, and to clarify why NMFS believes protecting it is essential for recovery of endangered and threatened salmon in Puget Sound. I am enclosing the fact sheet I shared with you during our discussion in Seattle, and an additional NMFS document that describes the importance of the supra-tidal marine shoreline for ESA-listed salmon.

Thank you again for the opportunity to work closely with you over these many months; we look forward to continued collaborations between our organizations at multiple levels. Please let me know if you or members of your staff are interested in additional information about marine shoreline ecosystem function and salmon use in Puget Sound.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Stelle, Jr.", written in a cursive, stylized font.

William W. Stelle, Jr.
Regional Administrator

Enclosures (3)

cc: Dennis McLerran, U.S. EPA
Kim Kratz, NMFS